Tells the Facts and Names the Names

CounterPunch

MARCH 1, 1996 *Ken Silverstein & Alexander Cockburn* **VOL. 3, NO. 5**

IN THIS ISSUE

The Secret History of "Tort Reform"

- APCO Associates and the fake grassroots campaign to protect corporate criminals
- Smoke and Mirrors: long march of tobacco lords reaches climax
- Citizens Against Lawsuit Abuse: the corporate crime lobby's favorite front group

Missing Dollars

- The True Mystery of *Primary Colors*

Plus:

- Rubin's China policy
- Porkers' Pricks Decarnadined: making the red ones green
- Free Trade: Stephen Rosenfeld's crisis of conscience

■

Now You Know

"To a degree unappreciated in New Hampshire, the middle class owns corporate America, and CEOs are the ultimate guardians of this generation's retirement and the next generation's tuition."

— Holman W. Jenkins, Jr., *The Wall Street Journal*, "The Problem With 'Us' vs. 'Them'."

Crime Without Punishment

Corporate Dream Nears Victory

Decade after decade the mightier names in the Fortune 500 have gnashed their teeth over the outrageous freedom permitted the suckers to strike back and sue them for products that maim, poison and kill. Because they push a product that knocks off nearly half a million people a year, none has gnashed more vigorously than the tobacco cartel.

So, back in the mid-1980s three tobacco firms, Brown & Williamson, Philip Morris and Lorillard, hired the public relations firm of Arnold & Porter to help set an early line of defense against claims filed by dying smokers. As part of the campaign, the renowned flack John Scanlon began collecting newspaper clippings from across the country concerning "outrageous" claims in personal-injury cases, which he remitted to influential reporters, columnists, editors and TV producers. "There was very little chance of being able to turn the public's mind around on the issue of smoking", Scanlon said in a 1987 interview. "But start, as I did, with the proposition that most of these liability cases are a demonstrable effect of the increase in the number of lawyers in America. Then try to generate a body of data about lawyers' excesses that the public can easily understand. My clients could only be the beneficiaries of that kind of consciousness."

Helped eagerly along by the insurance industry, Scanlon's efforts engendered what is now known as the "tort reform" movement, a thickly funded business campaign to shield corporations from product liability lawsuits arising from the sale of defective or inherently unsafe products such as cigarettes, asbestos and the Dalkon Shield. Soon the media began to reflect the moans of business leaders who complained that a "tort explosion" was undermining Corporate America.

Today, the corporations behind the product liability campaign are on the verge of triumph. A bill before Congress — part of the GOP's Contract With America and now in conference between House and Senate — would severely prune the right of consumers to sue corporations whose goods result in serious injury or death. The bill would limit punitive damages — a primary deterrent to corporate crime — to $250,000, even when a company has lied about the dangers its product poses. Republicans are usually the most aggressive promoters of "tort reform", but Democrats — especially Senator Jay Rockefeller — have also been effective allies of the corporate lobby.

CounterPunch offers here the secret history of "tort reform", along with an inside look at the web of think tanks, public relations firms and assorted front groups which have pushed the campaign for some of America's most criminal corporations. Reported here for the first time is the crucial role played by APCO Associates, a Washington consulting firm which is largely running the "reform" campaign at the behest of its corporate clientele, including Philip Morris.

While Scanlon took care of the PR function, the campaign's intellectual engineering was supervised by the Manhattan Institute, a think tank founded by Ronald Reagan's CIA director, William Casey. The Institute, financed by insurers such as Aetna, Allstate, Prudential and CIGNA, sponsored the movement's two bibles, Walter Olson's *The Litigation Explosion: What Happened When America Unleashed the Lawsuit*, and Peter Huber's *Galileo's Revenge: Junk Science in the Courtroom*.

Casey's think tank also spread the legal "horror stories" that are now so

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

familiar, most famously the case of the "foolish" jury that awarded $2.9 million to a woman who spilled a cup of McDonalds coffee on her lap while sitting in her car. This tale omits a few crucial details: during the decade prior to the incident, McDonalds received at least 700 reports of burns from its coffee, which is served at 190 degrees – hot enough to cause a third degree burn in less than three seconds. The victim in the case, 81-year-old Stella Liebeck, spent eight days in a hospital and required skin grafts. A trial judge reduced the much ballyhooed multi-million dollar award to $480,000 and Liebeck later settled out of court for an undisclosed but lesser amount.

Another think tank behind "tort reform" is Citizens for a Sound Economy (CSE), whose leaders include James Miller, ex-budget director under President Ronald Reagan, and C. Boyden Gray, former counsel to President George Bush. It receives enormous dispensations from Philip Morris, General Motors, Allstate and other leaders in the drive to cap corporate legal liability.

Over the past few years CSE has taken the lead in pressing for passage of a product liability bill in Congress. During last year's House debate on the measure, CSE spent millions of dollars on a lobbying blitz in 60 congressional districts. In conjunction with the American Council of Life Insurance, the National Federation of Independent Business Inc. and the U.S. Chamber of Commerce, CSE also helped pay for ad campaigns in *Roll Call*, *The Washington Post* and *The Washington Times*, among other publications.

The public face of the product liability campaign is the DC-based American Tort Reform Association, which claims demurely in a fund-raising letter that it is "not a wealthy special-interest group backed by vast cash resources...ATRA is the homeowner tired of paying exorbitant insurance premiums for minimal coverage. ATRA is the average citizen looking for an end to the threat of being sued." No less than six of ATRA's directors work for insurance companies or law firms that work for insurers. The Association also holds places at its table for representatives from the Pharmaceutical Research and Manufacturers of America, the Chemical Manufacturers Association, Monsanto, R.J. Reynolds and General Motors, maker of the exploding K-9 pick-up truck.

APCO Associates, a prime practitioner of "corporate grass-roots lobbying", helped create ATRA and largely runs the "tort reform" campaign. ATRA's official "grassroots consultant" is Neal Cohen, an APCO vice president and head of his firm's department of "political support services" – Beltway-ese for drumming up bogus grassroots campaigns for corporations. In addressing a conference of pr flacks a few years ago, Cohen advised his colleagues to keep high-profile corporate clients carefully hidden from the public's view, as this would detract from the illusion that the "tort reform" exploded spontaneously among outraged citizens and small businesses:

"In a tort reform battle, if State Farm [or] Nationwide is the leader of the coalition, you're not going to pass the bill. Because it's so self-serving; everybody knows that the insurance companies would be one beneficiary. You need to have credibility and that means when you pick people to join your coalition, make sure they're credible. And if they're not credible, keep 'em [out of sight]. You've got to make sure the leaders of the coalition are credible, and the core group of the coalition and the spokespeople.

"If you contribute big money to a coalition you better be at the table when the decisions are made and...it ought to be a card table and not a corporate [board room] table. Broad-based membership is: What does the public see? What do the legislators see? Decision-making is: a core group of three or so people who have similar interests and who are going to get the job done." (Thanks to John Stauber, co-author with Sheldon Rampton of the fine book *Toxic Sludge is Good for You: Lies, Damn Lies and the Public Relations Industry*, who gave us Cohen's speech.)

Cohen has helped create "grassroots" groups, typically called Citizens Against Lawsuit Abuse, which push the product liability campaign at the state level. These outfits recruit hundreds of companies to participate in their bogus "coalitions", but it is APCO – operating on the behalf of its high-paying clients – that calls the shots. It conducts extensive polling, pays for "independent" research papers, runs phone banks and otherwise oversees the operations of the state chapters.

In Mississippi, where APCO in 1993 dreamed up Mississippians for a Fair Legal System, Cohen gloated that weak disclosure laws meant opponents "didn't

Editors
KEN SILVERSTEIN
ALEXANDER COCKBURN

Production
TERRY ALLEN

Counselor
BEN SONNENBERG

Design
DEBORAH THOMAS

Published twice monthly except August, 22 issues a year:
$40 individuals,
$100 institutions,
$25 student/low-income
CounterPunch.
All rights reserved.
CounterPunch welcomes all tips, information and suggestions. Please call or write our offices.
CounterPunch
P.O. Box 18675,
Washington, DC 20036
202/986-3665 (phone/fax)

Rubin's China Syndrome

The decline in Pat Buchanan's fortunes will likely deny us his full-bore assault on the Clinton administration. Scheduled as a prime target was Wall Street's man, Treasury Secretary Robert Rubin.

A top flight Washington lobbyist is telling friends that Buchanan was preparing to accuse Rubin of supervising the Administration's China policy for personal gain and of still being involved in private partnerships operating in China. Certainly Goldman, Sachs – Rubin's old firm – was at the forefront of the race to China at the start of the 1990s, with a big trading operation in Hong Kong. And it is also true that Rubin has striven to maintain control of China policy, which essentially means ignoring any and all human rights abuses in the name of not offending a "valued trading partner". ■

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

really know [what business interests were] at the heart of everything. The problem they faced was we had 1,500 Mississippians mixed in with who our clients were." He also boasted that the the front group had recruited Warren Hood, owner of one of the state's biggest banks and the one which politicians often relied on for campaign loans. This, he explained, made Hood someone elected officials found especially hard to say "no" to.

In 1994, the tort hucksters launched a fierce drive in New Jersey. A Citizens Against Lawsuit Abuse front — self-described as a coalition of hundreds of small businesses — led the campaign. It neglected to mention the clandestine financial support it received from Philip Morris, Brown & Williamson, Bristol-Myers Squibb (a maker of silicon breast implants) and Owens-Corning Fiberglass (a manufacturer of asbestos). "Citizens" was housed in the offices of Princeton Public Affairs, a firm headed by Philip Morris lobbyist Dale Florio (no relation to former New Jersey governor Jim Florio), whom the tobacco company paid to put through law school.

APCO currently has field operators at work in tort campaigns in Maryland, Texas, Alabama, Florida, West Virginia, Louisiana and California. In the latter, Santa Monica-based political consultant Bill Zimmerman — former anti-war protester and nuclear freeze organizer — has allied himself with the "reformers".

Recent lobbying reforms passed by Congress won't affect APCO or other "grassroots" practitioners. Bowing to the Christian Coalition, Congress exempted such lobbying from disclosure requirements, saying it would restrict the right of citizens to petition the government.

At the federal level, it's likely that Congress will soon agree to a compromise bill, with the "radical" proposal from the House being "moderated" by the cooler heads in the Senate — this meaning that the upper chamber will strike a few provisions while maintaining the measure's primary thrust. If provided with acceptable cover, President Clinton will likely sign the bill while claiming that he stood firm against the menace from the House. In other words, win-win yet again.

A longer report on the "tort reform" campaign, focused on the role of the tobacco companies, is in an upcoming report by Public Citizen prepared by one of **CounterPunch**'s editors. ■

The *Primary Colors* Mystery:

How Did Dreary Fiction Become Bestseller?

The success of this thin novel by Anonymous is the wonder of the age, and can be explained only by the fact that since Bill Clinton is without a challenger for the Democratic nomination, *Primary Colors* offer a retro-primary — Good Bill vs. Bad Bill — by way of a substitute.

Shorn of narrative impedimenta used to push it past 350 pages and offer a respectable slab of airplane reading time, *Primary Colors* addresses two weeks in U.S. political history: the last furlong of the Democratic primary in New Hampshire in 1992. The book's candidate is "Jack Stanton" and his icy blonde wife "Susan", but *Primary Colors* would not survive for long without instant decrypt: Bill and Hillary and the *dramatis personae* of the 1992 campaign.

Novel and history march along in lockstep, at least in the former's more diverting portions. Candidate Stanton's sure-fire campaign in New Hampshire falters when Cashmere McLeod, his wife's hairdresser in Mammoth Falls, says she had an affair with him. This recalls, of course, how Candidate Clinton's campaign was nearly undone by Gennifer Flowers, whose name first cropped up in statements by a former Arkansas state employee, Larry Nichols. He put Gennifer among four women Clinton had supposedly carried on with.

Nichols soon backed down, saying a state cop had told him he was "a dead man" if he didn't. By that time Flowers had confirmed the story and provided plenty of convincing detail. Even so, the upmarket press disdained her as a self-aggrandizing slut.

This is where *Primary Colors* goes badly wrong, or at least misrepresents what happened during Clinton's near meltdown four years ago. Anonymous has the press as "scorps" — scorpions — eager to tear down and destroy. In fact, the overwhelming instinct of the Washington press corps was to save Clinton's ass, even though Little Rock was a mere three-hour plane ride away, tapes of Gennifer and Bill talking dirty on the phone were available, as were plenty of other ripe episodes of the governor's career, personal and public.

Here's another problem with *Primary Colors*. As a roman à clef about American politics, it has one ludicrous deficit. It barely speaks about the fuel of all American political life: money.

I-I'm C-Confused

"My natural instinct is for engagement and free trade, but I have been sobered by the human costs of the transition we are now in and am not so confident that the system is fairly easing the pain. I accept the argument of what seems to be a great majority of economists that the costs of free trade are lower and the benefits are higher than the available alternatives. But it is not a position I would be eager to defend in a hall full of people whose jobs have been exported." ■

— Stephen Rosenfeld,
The Washington Post

SUBSCRIPTION INFO

Enter/renew subscription here:

☐ One year individual, $40
☐ One year institution, $100
☐ One year student/low-income, $25
☐ Please send back issue(s) _____ ($3/issue)
☐ I am enclosing a separate sheet for gift subscriptions

Name_____

Address_____

City/State/Zip_____

_____

Payment must accompany order.
Add $10 for foreign subscriptions.
Make checks payable to: CounterPunch.
Return to: **CounterPunch.**
P.O. Box 18675
Washington, DC 20036

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In the early pages of *Primary Colors* there's a line about young Stanton not coming to New York to touch up the fat cats. This instantly dooms the book as any kind of useful guide to the democratic process. Out of a single zip code on New York's Upper East Side — 10021 — pour more campaign contributions than that coming from each of 24 states.

Go back through Clinton's gubernatorial campaigns of the 1980s and you'll find testimony to a hundred fundraisers on the Upper East Side. The smart Wall Street money was putting down markers on Clinton as early as 1984.

In January of 1992, *The Star* could have run photos of Bill and Gennifer coupling in front of the State capitol and what is chastely referred to as the "opinion-forming elites" would have either discounted the pix as allegations or not talked about them at all. When Gennifer finally published her charming 1995 memoir, *Passion and Betrayal*, with further intimate details about the conjunction of "Willard" and "Precious" (the relevant physical props of their romance), the "respectable" press passed up another opportunity to discuss how Bill got off the hook four years ago.

As *Primary Colors* does remark, the escape route for the press four years ago was to discuss the "role" of scandal in elections, the propriety of disclosure rather than the precise details of what was being disclosed. Four years later *Primary Colors* has had its success but not because of disclosures — legally safe beneath the mask of fiction — about what really was going on behind the green baize door of Campaign Clinton.

There's nothing in the book that Anonymous could not have learned from a pile of news clips and a couple of days following the governor. The hunt for Anonymous, thus far fruitless, got the book off the ground.

There's nothing that Anonymous could not have learned from news clips and a couple of days following the governor.

It's hard to imagine that Anonymous could have been a high-up in Campaign Clinton. There would have been at least one scene of Jack Stanton on his knees before the Money Power. Nor does it seem likely that Anonymous is a journalist. The press corps is sketchily described without the proud knowingness of a practitioner. Maybe some relatively lowly member of the campaign, a hanger-on or a professional novelist.

Anonymous isn't a bad writer. It's sea level fiction, neither rising above itself or its modest scope, nor plummeting into unendurable vulgarity. There are funny vignettes, particularly of a Jesse Jackson-type and of Stanton's mother. The troubleshooter digging up dirt on Stanton's opponents — based on Betsey Wright — is overdrawn. The sex — sparsely achieved by the unconvincingly black narrator and a Stanton political consultant — is the bare minimum. No V-chip needed here.

In *Primary Colors* Susan Stanton does nothing except act cool and lay the narrator once, who later broods ungallantly about her hairspray. Jack Stanton never meets a businessman or asks for money. In the end he's a fundamentally good guy who will do anything to get elected, which is how the press corps assessed him from day one. These days they all wish they had written *Primary Colors,* and in a sense they all did.

The novel's greatest failing is its last third, a truly silly version of the Jerry Brown challenge in the New York primary, during which the Clinton crowd got ABC to throw cocaine charges against Brown. The novel has the Clinton character virtuously rejecting such a path.

Particularly in politics, truth is so much more vivid than fiction. ■

Fido's Friend

"I am writing to you on behalf of Mr. R. Miles Handy II, President, Oink-Oink Inc. According to Mr. Handy, The United States Department of Agriculture was allowing Oink-Oink to purchase pork penises for use as a pet treat. They were purchasing the raw product from Iowa Packing Company. After several months of doing so, the USDA began to dye the raw penises green. As a result of this, Oink-Oink is unable to use them because of this discoloration. I would greatly appreciate your comments on this situation." ■

— Rep. Joseph Knollenberg, Republican from Michigan, in a Feb. 5 letter to the USDA's Scott Shearer.

CounterPunch
P.O. Box 18675
Washington, DC 20036

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED